

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

TRUSTEES OF THE OREGON- )  
WASHINGTON CARPENTERS- )  
EMPLOYERS HEALTH AND WELFARE )  
TRUST FUND, et al., )

Plaintiffs, )

v. )

UPRIGHT SHORING AND )  
SCAFFOLDING, INC., )

Defendant. )

No. CV-10-1521-HU

FINDINGS & RECOMMENDATION

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Attorneys for Plaintiff

1 HUBEL, Magistrate Judge:

2 Plaintiffs brought this action against defendant Upright  
3 Shoring and Scaffolding, Inc. for breach of a collective bargaining  
4 agreement and violation of the Employee Retirement Income Security  
5 Act ("ERISA"), 29 U.S.C. § 1132(g)(2). An Order of Default  
6 [doc. #7] was entered on January 26, 2011. Before the court is  
7 plaintiffs' motion for default judgment [doc. #8]. For the reasons  
8 set forth below, I recommend granting the motion.

9 **FACTS**

10 Plaintiffs are authorized under a Collective Bargaining  
11 Agreement, Compliance Agreement, and Trust Agreements to collect  
12 fringe benefit contributions, governed by ERISA, from signatory  
13 employers. Defendant Upright Shoring and Scaffolding, Inc. is an  
14 Oregon corporation and a signatory employer. Plaintiffs brought  
15 the instant ERISA action on December 14, 2010, to collect  
16 outstanding trust fund contributions, liquidated damages at 1% of  
17 the unpaid contributions from December 2010 until paid, interest on  
18 unpaid contributions at 12% from December 10, 2010, until paid,  
19 interest on unpaid dues at 9% from December 10, 2010, until paid,  
20 reasonable attorney fees, and costs. Compl. ¶ 16.

21 According to plaintiffs, defendant failed to make the  
22 contributions due for July, August, September, and October 2010,  
23 which total \$89,040.39. Compl. ¶ 10. Unpaid dues for the same  
24 months total \$6,588.15. Id. Interest totaled \$1,858.45 as of  
25 November 9, 2010, and is alleged to continue to accrue until  
26 payment. Id. Liquidated damages allegedly totaled \$2,089.96 as of  
27 November 20, 2010, and continue to accrue monthly at one percent of  
28 the amount due for each month contributions remain unpaid. Id.

2 - FINDINGS AND RECOMMENDATION

1 Attorneys fees total \$1,170. Decl. Cary Cadonau ¶ 7. Costs total  
2 \$415. Id. at ¶ 8.

3 The Trust Agreement that covers the relationship between the  
4 parties provides that payments are on the 20th day of each month.  
5 Supp. Decl. Cary Cadonau Ex. B, at 2. To the extent a payment is  
6 delinquent, the Trust Agreement imposes liquidated damages in the  
7 amount of "1 percent of the amount of all delinquent Contributions  
8 from the due date of the Contribution until paid for each month  
9 such Contributions are delinquent, which amount shall become due  
10 and payable . . . on the day immediately following the date on  
11 which the Contribution . . . becomes delinquent." Id. at 2-3. The  
12 Trust Agreement also provides, "In case of failure of an Individual  
13 Employer to make required Contributions, the Trustees may take  
14 necessary legal action to collect such Contributions, interest,  
15 liquidated damages, reasonable audit fees, reasonable paralegal and  
16 attorney fees . . . [and] any costs." Id. at 3.

### 17 **DISCUSSION**

18 Due process requires plaintiffs seeking default judgements to  
19 make out a prima facie case showing entitlement to judgment.  
20 TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir.  
21 1987). Federal Rule of Civil Procedure 55 provides that a clerk  
22 may enter a default judgment "[i]f the plaintiff's claim is for a  
23 sum certain or a sum that can be made certain by computation."  
24 Fed. R. Civ. P. 55(b)(1). In order for a court to enter a default  
25 judgment, it needs to conduct an accounting, determine the amount  
26 of damages, and establish the truth of any allegation by evidence.  
27 See Fed. R. Civ. P. 55(b)(2)(A)-(C). This court has previously  
28 held that in trust fund contribution cases, in order to be entitled

1 to a default judgment plaintiffs must include a breakdown of the  
2 calculations in a format for easy review of the principal amount  
3 owed, the date it was paid, the interest for that month, and the  
4 liquidated damages for that month. Tr. of the Plumbers and  
5 Pipefitters Nat. Pension Fund v. Scott Co. of Cal., No. CV-03-1099-  
6 HU, 2003 WL 24015255, at \*3 (D. Or., Oct. 10, 2003).

7 In cases where trusts seek unpaid dues from signatory  
8 employers, the prima facie case begins with the submission of the  
9 master agreements that show the trusts are entitled to collect  
10 contributions each month. Submission of the master agreements,  
11 however, is only one component of making a prima facie case.  
12 Documentation showing the computations is also required.

13 Typically in this type of case the trusts will perform an  
14 audit of the non-paying signatory employer's financial records for  
15 the months in question. The audit records will be reviewed by an  
16 accountant or similarly qualified professional to determine the  
17 proper amount of unpaid contributions. When moving for a default  
18 judgment, the moving plaintiff will submit a declaration from the  
19 accountant stating that he or she reviewed the audit records, that  
20 certain employees worked for a certain number of hours at a certain  
21 rate, and then calculate the contributions due under the  
22 agreements. Typically the accountant will include a spreadsheet  
23 showing his or her calculations showing how the unpaid dues were  
24 calculated for the months in question.

25 Although the above procedure is not mandatory, it ensures that  
26 the court has the proper record from which to "make the sum certain  
27 by computation" to support a default judgment.

28 Here, the plaintiffs have complied with these procedures.

1 Plaintiffs submitted detailed breakdowns of employee hours, rates,  
2 and would-be contributions to various funds that plaintiffs  
3 collect. Plaintiffs submitted a declaration detailing that the 9%  
4 interest rate for unpaid dues is based ORS 82.010, which provides  
5 that "[t]he rate of interest for the following transactions, if the  
6 parties have not otherwise agreed to a rate of interest, is nine  
7 percent per annum and is payable on [a]ll moneys after they become  
8 due; but open accounts bear interest from the date of the last item  
9 thereof." ORS 82.010(1)(a). Plaintiffs also submitted master  
10 trust agreements supporting the 12% (1% per month) interest rate on  
11 contributions, the 1% interest rate on liquidated damages, and a  
12 detailed spreadsheet showing the interest calculations for each  
13 month in question.

14 I have reviewed the plaintiffs' calculations and they are  
15 correct. Therefore, I recommend granting the motion for default  
16 judgment awarding judgment to plaintiffs as follows:

17 \$95,628.54 as contributions due

18 \$1,858.45 as interest through December 9, 2010, on  
19 contributions and dues

20 \$2,089.96 as liquidated damages as of November 29, 2010

21 \$29.27 per diem interest as contributions from  
December 10, 2010, until paid

22 \$1.62 per diem interest on dues from December 20, 2010  
23 until paid

24 \$890.40 per month as liquidated damages on contributions  
starting December 20, 2010, and each 20th of the month  
25 thereafter

26 \$1,170.00 as attorney fees

27 \$415.00 as court costs  
28

1 **CONCLUSION**

2 Plaintiffs' motion for default judgment [doc. #9] should be  
3 granted.

4 **SCHEDULING ORDER**

5 The Findings and Recommendation will be referred to a district  
6 judge. Objections, if any, are due May 31, 2011. If no objections  
7 are filed, then the Findings and Recommendation will go under  
8 advisement on that date.

9 If objections are filed, then a response is due June 17, 2011.  
10 When the response is due or filed, whichever date is earlier, the  
11 Findings and Recommendation will go under advisement.

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13 Dated this 10th day of May, 2011.

14 /s/ Dennis J. Hubel

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16 Dennis James Hubel  
17 United States Magistrate Judge  
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